

1973

c 123 The Private Hospitals Amendment Act, 1973

Ontario

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CHAPTER 123

An Act to amend The Private Hospitals Act

*Assented to November 29th, 1973
Session Prorogued March 5th, 1974*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clause *b* of section 1 of *The Private Hospitals Act*, being ^{s. 1 (b),} chapter 361 of the Revised Statutes of Ontario, 1970, is ^{repealed} repealed.

(2) The said section 1 is amended by adding thereto the ^{s. 1,} following subsection: ^{amended}

(2) A reference in this Act to the Commission shall be ^{References to} deemed to be a reference to the Minister. ^{Commission}

2. Section 3 of the said Act is repealed and the following sub- ^{s. 3,} stituted therefor: ^{re-enacted}

3.—(1) No person shall use a house as a private hospital ^{Licence} except under the authority of a licence issued under this ^{required to} Act before the 29th day of October, 1973, or a renewal of ^{operate} such a licence. ^{private} ^{hospital}

(2) Where a house is used as a private hospital in con- ^{Offence} travention of subsection 1, the occupier and each person concerned in the management or operation of the house or in the admission thereto or treatment therein of any patient are severally guilty of an offence and on summary conviction are each liable to a fine of not less than \$100 and not more than \$500 for each day upon which such contravention occurs or continues.

3.—(1) Subsection 1 of section 5 of the said Act is repealed. ^{s. 5 (1),} ^{repealed}

(2) Subsection 2 of the said section 5 is amended by striking ^{s. 5 (2),} out "until it has first received the approval of the Com- ^{amended} mission" in the third and fourth lines.

s. 5 (3, 4),
repealed

(3) Subsections 3 and 4 of the said section 5 are repealed.

s. 6,
re-enacted

4. Section 6 of the said Act is repealed and the following substituted therefor:

Proceedings
to prohibit
continuation
or repetition
of contraven-
tion

6.—(1) Where subsection 1 of section 3 or section 18 is contravened, notwithstanding any other remedy or any penalty imposed, the Minister may apply to a judge of the Supreme Court by originating motion for an order prohibiting the continuation or repetition of the contravention or the carrying on of any activity specified in the order that, in the opinion of the court, will or will likely result in the continuation or repetition of the contravention by the person committing the contravention and the judge may make the order and, where the judge considers it proper, may postpone the operation of the order for a period of not more than thirty days after the day of the making of the order to permit patients in the house to find alternative accommodation and vacate the premises, and the order may be enforced in the same manner as any other order or judgment of the Supreme Court.

Rescission or
variation of
order

(2) Any person against whom an order has been made under subsection 1 may apply to a judge of the Supreme Court for an order varying or rescinding the order.

s. 9,
re-enacted

5. Section 9 of the said Act is repealed and the following substituted therefor:

Transfer
of licence

9. A licence under this Act is transferable only where the proposed transferee obtains the prior written consent of the Minister to the transfer, but the Minister shall not grant his consent to the transfer until he is satisfied by such evidence as he may require as to the good character and the fitness of the transferee to manage and operate the private hospital.

s. 11 (1) (a),
amended

6. Clause *a* of subsection 1 of section 11 of the said Act is amended by striking out "by complying with sections 5 and 6" in the second and third lines and inserting in lieu thereof "but the Minister shall not grant his consent to the transfer until he is satisfied by such evidence as he may require as to the good character and the fitness of the transferee to manage and operate the private hospital".

ss. 12a-12d,
enacted

7. The said Act is amended by adding thereto the following sections:

Refusal
to renew
or consent
to transfer
or revocation

12a.—(1) Where the Minister proposes to refuse to renew or consent to the transfer of a licence or proposes to revoke

a licence under this Act, he shall serve notice of his proposal, together with written reasons therefor, on the licensee.

(2) A notice under subsection 1 shall inform the licensee that he is entitled to a hearing by the Health Facilities Appeal Board established under *The Ambulance Act* if he mails or delivers, within fifteen days after the notice under subsection 1 is served on him, notice in writing requiring a hearing to the Minister and the Board and he may so require such a hearing.

Notice
requiring
hearing
R.S.O. 1970,
c. 20

(3) Where a licensee does not require a hearing by the Health Facilities Appeal Board in accordance with subsection 2, the Minister may carry out the proposal stated in his notice under subsection 1.

Powers of
Minister
where no
hearing

(4) Where a licensee requires a hearing by the Health Facilities Appeal Board in accordance with subsection 2, the Board shall appoint a time for and hold the hearing and, on the application of the Minister at the hearing, may by order direct the Minister to carry out his proposal or refrain from carrying out his proposal and to take such action as the Board considers the Minister ought to take in accordance with this Act and the regulations, and for such purposes the Board may substitute its opinion for that of the Minister.

Powers of
Board where
hearing

(5) The Health Facilities Appeal Board may extend the time for the giving of notice requiring a hearing by a licensee under this section either before or after expiration of such time where it is satisfied that there are *prima facie* grounds for granting relief to the licensee pursuant to a hearing and that there are reasonable grounds for applying for the extension and the Board may give such directions as it considers proper consequent upon the extension.

Extension
of time for
requiring
hearing

(6) Where, within the time prescribed therefor or, if no time is prescribed, before the expiry of his licence, a licensee has applied for renewal of his licence and paid the prescribed fee, his licence shall be deemed to continue,

Continuation
of licence
pending
renewal

(a) until the renewal is granted; or

(b) where he is served with notice that the Minister proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing by the Board has expired and, where a hearing is required, until the Board has made its decision.

Parties

12b.—(1) The Minister or licensee who has required the hearing and such other persons as the Health Facilities Appeal Board may specify are parties to proceedings before the Board under this Act.

Notice of hearing

(2) Notice of a hearing under section 12a shall afford the licensee a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the renewal, retention or transfer of the licence.

Examination of documentary evidence

(3) A licensee who is a party to proceedings under subsection 1 shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Members holding hearing not to have taken part in investigation, etc.

(4) Members of the Health Facilities Appeal Board holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the Board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Recording of evidence

(5) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Findings of fact

(6) The findings of fact of the Board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of *The Statutory Powers Procedure Act, 1971*.

1971, c. 47

Only members at hearing to participate in decision

(7) No member of the Board shall participate in a decision of the Board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision.

Release of documentary evidence

(8) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to him by the Board within a reasonable time after the matter in issue has been finally determined.

12c.—(1) Any party to the proceedings before the Health Facilities Appeal Board may appeal from its decision or order to the Supreme Court in accordance with the rules of court. Appeal to court

(2) Where any party appeals from a decision or order of the Board, the Board shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision was made, which, together with the transcript of evidence if it is not part of the Board's record, shall constitute the record in the appeal. Record to be filed in court

(3) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the Board and may exercise all powers of the Board to direct the Minister to take any action which the Board may direct him to take and as the court considers proper and for such purposes the court may substitute its opinion for that of the Minister or of the Board, or the court may refer the matter back to the Board for rehearing, in whole or in part, in accordance with such directions as the court considers proper. Powers of court on appeal

12d. Except where otherwise provided, any notice required by this Act to be served may be served personally or by registered mail addressed to the person to whom notice is to be given at his latest known address and, where notice is served by registered mail, the service shall be deemed to have been made on the third day after the day of mailing unless the person to whom notice is given establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice until a later date. Service of notice

8. Section 18 of the said Act is repealed and the following substituted therefor: s. 18, re-enacted

18.—(1) No person shall construct, add to or enlarge the patient bed capacity of any house that is or that is intended to be used as a private hospital. Construction, addition or enlargement prohibited

(2) No person shall alter or renovate a house that is used as a private hospital unless he has first obtained the approval in writing of the Minister for the alteration or renovation. Alteration or renovation

(3) The Minister may require an applicant for an approval under subsection 2 to submit to the Minister any plans, specifications and other information related to the alteration or renovation and, subject to subsection 4, the Minister may issue his approval in writing for the alteration or renovation. Minister may require material

Where
Minister
may refuse
approval
or impose
terms and
conditions

(4) The Minister may refuse to issue an approval under subsection 2 where he considers that it is not in the public interest to issue the approval or may issue his approval subject to such terms and conditions as he considers are in the public interest.

Matters to
be considered
by Minister

(5) In considering whether it is in the public interest under subsection 4 to refuse to issue an approval or to issue an approval subject to terms and conditions, the Minister shall take into account,

- (a) whether the proposed alteration or renovation will or will likely be prejudicial to the health, safety or welfare of the patients who are receiving or are likely to receive services or treatment in the private hospital; and
- (b) whether the proposed alteration or renovation will or will likely result in a contravention of this Act or the regulations or of any other Act or regulation that applies to a private hospital or of any municipal by-law related to the proposed alteration or renovation.

Number
of patients
not to be
increased

(6) The number of patients that is permitted by the licence issued under this Act in respect of a private hospital shall not be increased as the result of any alteration or renovation of the house that is used as the private hospital.

Commence-
ment

9. This Act comes into force on the day it receives Royal Assent.

Short title

10. This Act may be cited as *The Private Hospitals Amendment Act, 1973*.